

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, January 23, 2008
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Francis J. Carney, Terrie T. McIntosh, Leslie W. Slaugh, Honorable Lyle R. Anderson, Honorable David O. Nuffer, Janet H. Smith, Thomas R. Lee, Honorable R. Scott Waterfall, Todd M. Shaughnessy, Honorable Anthony B. Quinn, Honorable Derek Pullan, Anthony W. Schofield, Todd M. Shaughnessy, Lori Woffinden, and Lincoln Davies

EXCUSED: David W. Scofield, Cullen Battle, Barbara Townsend, Steve Marsden, James T. Blanch, Jonathan Hafen, and Matty Branch

STAFF: Tim Shea and Trystan B. Smith

GUEST: Kim Colton

Mr. Wikstrom welcomed Lincoln Davies to the committee. Mr. Davies is a new faculty member at the S.J. Quinney College of Law. He will replace Ms. Threedy on the committee.

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m., and entertained comments from the committee concerning the November 28, 2007 minutes. No comments were made and Mr. Wikstrom asked for a motion that the November 28, 2007 minutes be approved. The motion was duly made and seconded, and unanimously approved.

II. UNIFORM FAX POLICY.

Mr. Colton is the Chair of the Utah State Bar's Courts and Judges Committee. Mr. Colton discussed the Courts and Judges Committee's concerns about a uniform policy for fax filing in district and juvenile courts.

Mr. Wikstrom recounted the committee's previous discussions in February 2005 regarding fax filings. Judge Quinn discussed the Board of District Court Judges past experiences addressing fax filing and the local rules for individual districts. He indicated rural districts utilize fax filing with much more frequency than urban districts. He further noted rural districts feel fax filing is necessary. While urban districts (specifically the Third District), do not allow fax filings. Judge Anderson suggested that fax filing may not be necessary in rural districts except in limited circumstances — such as the issuance of search warrants. Mr. Schofield

reiterated Judge Anderson's concern that an exception for fax transmissions related to search warrants was necessary.

Mr. Wikstrom indicated to the committee his belief that the adoption of the e-filing rules mooted the issue of a uniform fax filing policy. Mr. Colton indicated the concern was not with whether to allow fax filing, but uniformity. Mr. Shea indicated that the committee could likely expect approval of the e-filing rules by April 1, 2008. He expected by April/May 2008 it is likely e-filing would be available. Mr. Colton noted that to the extent the e-filing rules were on the verge of being adopted his concerns about uniformity were indeed moot.

III. COMMENTS TO RULES 7, 40, 41, 101 AND SMALL CLAIMS RULE 3 AND RULES 1, 5, 10, 11, 64D.

Mr. Shea brought the comments to the published rule changes to the committee.

Small Claims Rule 3

Mr. Shea initially discussed Small Claims Rule 3. He suggested a revision to Rule 3(b) to state, "If the affidavit is not served within 120 days after *filing*, *the action may be dismissed without prejudice, upon the Court's own initiative with notice to the plaintiff.*"

Rule 40(a)

The committee also discussed Judge McVey's comments concerning Rule 40(a). Judge McVey suggested the proposed rule change should be revised to state, "The Court shall schedule the trial [and] notify parties of the trial date and of any pretrial conference." The committee discussed the concern that some judges may not consult with counsel or the parties before scheduling a trial. The committee further discussed the need for the second two sentences of subsection (a).

Mr. Lee suggested removing the second two sentences of subsection (a). Judge Quinn suggested revising subsection (a) to state, "The court may but is not required to schedule a trial, until the case is certified pursuant to Rule 16(b)(8)." Mr. Shea proposed revising the language to state, "Until the case is certified in accordance with Rule 16, the court may, but is not required, to schedule a trial." Judge Quinn moved to adopt Mr. Shea's proposed revision. The motion was seconded, and approved.

Rule 101

The committee also discussed the comments to Rule 101. The comments expressed concern that parties may seek protective orders falsely alleging domestic violence in light of the proposed amendment to Rule 101 (I). After brief discussion, the committee continued to express support for the proposed amendment limiting a party's ability to seek orders to show cause. The committee further discussed amending Rule 101 to eliminate the mandatory hearing requirement. After discussion, the committee did not feel it was necessary to revise the proposed amendment.

Rule 5(e)

Mr. Shea discussed Rule 5(e). He indicated the need to revise subsection (e) to clarify when service would be complete for electronically filed documents. The committee discussed

and approved revising Rule 5(e) to state, “ Filing is complete upon *the earliest of acceptance by the clerk of the court, the judge or the electronic filing system. The filing date shall be noted.*” The committee also discussed and approved deleting the last sentence of subsection (e).

Rule 10

The committee discussed the comments to Rule 10. Mr. Shea recommended that the committee amend the Rules to eliminate the requirement that a party put non-public information in a public record. Mr. Shea suggested that the Rules should be amended to allow parties to include non-public information in the civil cover sheet, instead of on the face of every pleading and paper. The proposal is that only the name and the party designation would be included on the face of every pleading and paper. E-filers would be required to file a separate Certificate of Mailing for every pleading and paper that would be protected or sealed from public view.

The committee considered the potential that counsel would be required to track whether an opposing party did not want his or her non-public information on every pleading and paper, and redact the non-public information. After extensive discussion, the committee agreed to strike the phrase “and serve” from Rule 10(a)(3), and further revise subsection (a)(3) to state, “The Court [may] destroy the cover-sheet after recording the information it contains.” The committee approved the suggested revisions.

Finally, Mr. Shea addressed the balance of the comments to the remainder of the proposed rule changes. After considering the comments, the committee did not incorporate any of the suggested changes. The committee agreed to submit the proposed amendments, with the agreed upon changes, to the Utah Supreme Court.

IV. RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS.

Mr. Wikstrom asked that the committee discuss Rule 35 at the next meeting.

V. RULE 6, ET AL. TIME.

Mr. Wikstrom asked that the committee discuss Rule 6 at the next meeting.

VI. OVERALL EVALUATION OF URCP.

Mr. Wikstrom asked that the committee discuss the overall evaluation of the Rules at the next meeting.

VII. ADJOURNMENT.

The meeting adjourned at 6:00 p.m. The next meeting of the committee will be held at 4:00 p.m. on Wednesday, February 27, 2008, at the Administrative Office of the Courts.